6-21-1886

Report : Claim of J. Little and H. Williams

49TH CONGRESS, 1st Session. SENATE. REPORT No. 1355.

IN THE SENATE OF THE UNITED STATES.

JUNE 21, 1886.—Ordered to be printed.

Mr. BOWEN, from the Committee on Indian Affairs, submitted the following

REPORT:

[To accompany bill S. 2704.]

The Committee on Indian Affairs having, during the last session of the Forty-eighth Congress, referred to the Court of Claims, for the findings of the facts, the claim of John Little and Hobart Williams, respectfully report that the findings of said court have been officially certified to said committee by said Court of Claims as follows, to wit:

[In the Court of Claims. John Little and Hobart Williams *v.* The United States. No. 15, Congressional case.]

At a Court of Claims held in the city of Washington on the 1st day of June, 1885, in the case aforesaid, the court filed findings of fact, and it was ordered that a certified copy thereof, and of the order of the court thereon, be reported to the Senate Committee on Indian Affairs.

BY THE COURT.

J. W. DOUGLASS, Esq.,
Attorney of Record.

[In the Court of Claims. Congressional case No. 15. John Little and Hobart Williams *v.* The United States.]

FINDINGS OF FACTS. FILED JUNE 1, 1885.

This case was referred to the Court of Claims by the Senate Committee on Indian Affairs, under the act of March 3, 1883 (22 Stat., 485), and having been heard by the Court, the Attorney-General, by his assistant, F. H. Howe, appearing for the defense and protection of the interests of the United States, and John W. Douglass for the claimants, the Court, upon the evidence, finds the facts to be as follows:

I.

The following agreement was entered into by the parties named therein:

This agreement, made this 22d day of January, 1870, between the United States of America, by their superintendent of Indian Affairs, Samuel M. Janney, for the northern superintendency, and Thomas Lightfoot, United States Indian agent for the Iowa tribe of Indians; and the Iowa tribe of Indians by their delegates, Nag-ga-rash, Tohee, Mah-hee, Tar-a-kee, Ki-ho-ga, and Craton-tha-wa, of the first part, and Ephraim D. Pratt, Lorenzo B. Williams, and Thomas McCague, of the city of Omaha, in the county of Douglass and State of Nebraska, of the second part, witnesseth:

That the parties of the first part, for and in consideration of the covenants on the part of the parties of the second part, hereinafter contained, have this day demised, leased, and rented, and by these presents do demise, lease, and rent for the term of twenty-five years from the date of this instrument, unto the parties of the second part, their heirs and assigns, all of the land now owned and occupied by the Iowa

tribe of Indians lying and being in the States of Kansas and Nebraska, for the purpose of prospecting for and mining coal and coal minerals, including "fire-clay," with the right and privilege to take therefrom all coal and clay for their own use and behoof, together with so much of the timber growing upon the said lands as may be required for propping up the mines and prosecuting the same; also, 25 acres of the surface of said tract of land, the precise location of which shall be designated at some future time, subject to the approval of the Iowa tribe of Indians, by their delegates or chief, for the legitimate prosecution of their said mining operations. The said party of the first part further agrees to give unto the said party of the second part quiet and peaceable possession of said land, and to defend them therein, together with the privilege of ample road-ways across said tract of land to and from said mines without charge or cost, subject to the conditions hereinafter mentioned. The parties of the second part agree to keep a correct account of all coal mined from said coal lands, and to render a correct account of the same every three months, and to pay 1 cent per bushel as rent for the same to the said party of the first part.

The said party of the first part shall be privileged by their agent or representative at all times to examine the mines and the mining operations of the party of the second part, together with their books, papers, and accounts, and every requisite facility shall be given them to ascertain the precise amount of coal mined or sold from said lands. The parties of the second part agree to faithfully work the said mines if, after prospecting, they shall find it is policy or profitable so to do; but if they should find it otherwise, and should hereafter cease to work said mines for the space of six months during the continuance of this lease, then the party of the first part shall have the power to declare this lease null and void, and to take possession of the said mining operations without objection to or hindrance from the said parties of the second part.

The parties of the second part agree to pay to the party of the first part the sum of $1 per cord for all of the timber taken from said lands for the mining operations aforesaid, and to make use of down or fallen timber whenever it is accessible and convenient.

The parties of the second part further agree to sell to the Iowa tribe of Indians, and to the Indian agent and their employés, all the coal they may require for their own private use, at the lowest wholesale prices, and that the said Iowa Indians shall have their coal for their shops free of charge at the mines, not to exceed 10 tons per annum.

The parties of the second part shall have the privilege of erecting such buildings and machinery as may be necessary to carry on the said mining business, with full power to take the minerals, buildings, and machinery away at their pleasure.

It is expressly understood and agreed by the parties hereto that this lease is subject to termination without charge, loss, or damages to the United States, in case disposition is made of the lands by treaty stipulations, or otherwise.

In witness whereof we have hereunto set our hands and seals the day and year first above written.

DEPARTMENT OF THE INTERIOR (INDIAN),
Washington, D. C, March 16, 1870.

SIR: I have approved and herewith return the lease from the United States, through Superintendent Janney and Agent Lightfoot, and from the Iowa tribe of Indians to Ephraim D. Pratt and others, for mining operations on the Iowa lands in Kansas and Nebraska, as recommended in your letter of the 5th instant.

Very respectfully, your obedient servant,

W. T. OTTO,
Acting Secretary.

The COMMISSIONER OF INDIAN AFFAIRS.

II.

This lease, after passing through several hands, was finally purchased by the claimants in November, 1875.

In March, 1876, the following letter was sent to the Indian agent at Omaha:

DEPARTMENT OF THE INTERIOR, OFFICE OF INDIAN AFFAIRS,
Washington, D. C., March 29, 1876.

SIR: I acknowledge herewith the receipt of your letter of the 7th ultimo, notifying this office of the change of title of the Omaha Coal Mining Company to that of the Nebraska Coal Mining Company, and of the instructions given by you to Agent Kent with reference to receiving royalty on coal mined by said company, and expending the same for the benefit of the Iowa Indians.

A decision of the Supreme Court of the United States rendered at the October term, 1873, in the case of the United States *vs.* George Cook, so materially affects the rights supposed to be acquired by said company under the said lease and of the Indi-

ans in and to the moneys arising from operations thereunder, that it will necessitate the immediate cessation of all mining operations on the reserve, and the covering of all royalty arising from that source into the Treasury of the United States.

The case cited arose upon a question of the rights of the Oneida Indians to cut and sell timber growing upon the tribal reservation. The Supreme Court held that "the right of the Indians in the land from which the logs were taken was that of occupancy alone. They had no power of alienation except to the United States.

"The fee was in the United States subject only to their right of occupancy; that timber while standing is a part of the realty, and it can only be sold as the land could be; the land cannot be sold by the Indians; and consequently the timber, until rightfully severed, cannot be. It can be rightfully severed for the purpose of improving the land or the better adapting it to convenient occupation, but for no other purpose. If the timber should be severed for the purpose of sale alone, in other words, if the cutting of the timber was the principal thing and not the incident, then the cutting would be wrongful, and the timber when cut become the absolute property of the United States. The cutting was waste, and, in accordance with well-settled principles, the owner of the fee may secure the timber cut, arrest it by replevin, or proceed in trover for its conversion."

The principles recognized in this case are decisive of the question involved in this lease. The rules of law that are here applied to the removal of timber from an Indian reservation, other than for the sole purpose of improving the land for occupancy, apply also to the severing of any other material from the realty. The mining of coal by the said mining company coming within the provisions of this ruling, the application of the principles laid down determines the rights of all the parties under said leese. You will, therefore, upon the receipt of this letter, instruct Agent Kent to notify the proper officers of said coal mining company to account for all coal mined to date, and to immediately cease operations under their lease.

You will also instruct Agent Kent that all moneys which have already, or which may hereafter come into his hands under the provisions of the lease, must be covered into the Treasury of the United States under the head of miscellaneous receipts.

Very respectfully,

J. Q. SMITH,
Commissioner.

BARCLAY WHITE,
Superintendent Indian Affairs, Northern Superintendency, Omaha, Nebr.

The Indian agent gave the required notice to the claimants. A correspondence with the Department followed, in which the claimants protested against the order. They, however, left the premises soon after.

III.

Value of the leasehold and property.

Prior to the purchase by the claimants the leasehold premises had been considerably improved by former owners. A coal-drift had been made in the bank facing the river, a car-track laid in the drift, and a shute constructed at the mouth. Two frame buildings and a shanty had been erected upon the premises.

The personal property on the premises consisted of coal-cars, tools, furniture, &c., which, in the purchase, were inventoried at $473.75.

The claimants paid for the leasehold and betterments $950; for the personal property, $473.75; total, $1,423.75.

During the claimants' occupancy they mined 100 tons of coal, and sold the same for $800. The proceeds of the sale of coal was probably exhausted in repairing and operating the mine.

The claimants estimate their whole outlay at about $4,000 or $5,000, but furnish no items or statement of accounts in support of their estimate.

The condition of the premises at the time they left them, as compared with their condition when they first took possession, shows that the whole expenditure in repairs or improvements could not have exceeded a few hundred dollars. The personal property was of so little value that they did not remove it.

The outlay of the claimants in excess of the sums received from the sale of coal, would probably not exceed $2,000.

IV.

Prospective profits.

The claimants estimate their prospective profits at about $15,000. The evidence, however, furnishes no foundation for such expectations. So far no profit has been

realized either by the claimants or former owners. One of the claimants states in his testimony that his estimate of prospective profits is based upon the belief that profitable veins of coal will ultimately be discovered. Such expectations are too uncertain for judicial calculation.

V.

Expenditure by former owners.

The claimants also insist that in calculating their losses, the expenditures of former owners should be considered. They state the amount to be about $15,000.

It may well be supposed from the improvements on the ground that several thousand dollars have been expended there by former owners; but the court is furnished with no satisfactory evidence upon the subject.

The market value of the property at the time the claimants were dispossessed—not the amount expended upon it—indicates their loss. The whole plant cost the claimants the amount set forth in Finding III. The evidence does not show that they paid for the property less than its market value, nor that they afterward expended upon it any considerable sum beyond operating expenses.

Ordered by the court: That a certified copy of the foregoing findings of facts and of this order be reported to the Senate Committee on Indian Affairs.

IN THE COURT OF CLAIMS,
Washington, D. C.:

I certify that the foregoing are two transcripts of the order of the court, and of the findings of fact filed June 1, 1885, by the court in case of John Little and Hobart Williams *v.* The United States, No. 15, Congressional.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, this 4th day of January, 1886.

[SEAL.] JOHN RANDOLPH,
Assistant Clerk, Court of Claims.

Your committee therefore recommend that said claimants be paid the sum of $2,000, and submit herewith a bill to that effect.